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June 28, 2004

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Presentation*
Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321
Non-Accounting Safeguards of Sections 271 and 272, CC Docket No. 96-149
Accounting Safeguards under the Telecommunications Act, CC Docket No. 96-150
Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112
BellSouth Section 272 Audit, EB Docket No. 03-197
Qwest Section 272 Audit, EB Docket No. 03-198
SBC Section 272 Audit, EB Docket No. 03-199
Verizon Section 272 Audit, EB Docket No. 03-200

Dear Ms. Dortch:

On June 28, 2004, members of the Joint Competitive Industry Group ("JCIG") provided the attached written *ex parte* presentation to William Maher, Chief, Wireline Competition Bureau.

In accordance with the Commission's rules, a copy is being provided to you for inclusion in the public record of the above-referenced proceedings.

Sincerely,

Gil M. Strobel

Attachment

cc: Scott Bergmann, Matthew Brill, Michelle Carey, Jeffrey Carlisle, Samuel Feder, Brad Koerner, Christopher Libertelli, Jennifer Manner, Paul Margie, Barry Ohlson, Jessica Rosenworcel, Robert Tanner, Julie Veach, Sheryl Wilkerson

June 28, 2004

William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Analysis of BOC Special Access Performance Proposals

Dear Mr. Maher:

BellSouth, SBC, Qwest, and Verizon each have filed proposed special access performance measures[1] that they contend the Commission should adopt in lieu of the proposal that the Joint Competitive Industry Group ("JCIG") filed in January 2002.[2] These four Bell Operating Companies ("BOCs") are collectively the dominant providers

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[1] Letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket Nos. 96-149 and 01-321 and WC Docket Nos. 02-112 and 03-197 (April 29, 2004), and attached *ex parte* presentation entitled "BellSouth's Harmonized Section 272(e)(1) Performance Measurements Proposal" ("BellSouth April 29, 2004 Presentation") and proposal entitled "Harmonized Performance Metrics Proposal" ("BellSouth April 29, 2004 Proposal"); letter from Brett A. Kissel, SBC, to Marlene H. Dortch, FCC, CC Docket No. 01-321 and WC Docket No. 02-112 (dated May 27, 2004; filed June 1, 2004), and attached *ex parte* presentation entitled "Performance Measures After §272 Sunsets" ("SBC May 27, 2004 Presentation") and proposal entitled "272(e)(1) Information Disclosures" ("SBC May 27, 2004 Proposal"); letter from Cronan O'Connell, Qwest, to Marlene H. Dortch, FCC, CC Docket Nos. 96-149 and 01-321, WC Docket No. 02-112 and EB Docket No. 03-197 (May 20, 2004), and attached *ex parte* presentation entitled "Assessment of BellSouth Proposal" (Qwest May 20, 2004 Presentation") and proposal entitled "Service Performance Measurement Descriptions (SPMD); 14-State 272 SPMD Version 2.10" ("Qwest May 20, 2004 Proposal"); letter from Tyrone Keys, Jr., Verizon, to Marlene H. Dortch, FCC, WC Docket No. 02-112 (June 16, 2004) ("Verizon June 16, 2004 *ex parte*"). In addition, Verizon has filed a presentation outlining principles that it believes should inform any special access measures. *Ex parte* presentation attached to letter from Tyrone Keys, Verizon, to Marlene H. Dortch, FCC, WC Docket Nos. 01-321 and 02-112 (May 17, 2004) ("Verizon May 17, 2004 Presentation").

[2] "Joint Competitive Industry Group Proposal; ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service" (Jan. 18, 2002), Attachment A to letter from A. Richard Metzger, Jr. to Chairman Powell, FCC, CC Docket No. 01-321 (Jan. 22, 2002) ("JCIG Proposal").

of special access services. JCIG, by contrast, is comprised of the full spectrum of special access customers: large corporate end users, CMRS carriers, inter-exchange carriers and competitive local exchange carriers ("LECs").[3] From this customer-oriented perspective, JCIG is united in its position that all of the BOCs' proposals suffer from critical flaws that make them unsuitable alternatives to JCIG's long-standing proposal.

The proposals offered by the BOCs exclude several key measurements, and the few measures they do offer omit information that customers and regulators need if they are to evaluate the BOCs' performance accurately. Indeed, BellSouth's proposal represents a retreat from the metrics it filed in August 2002 as part of its agreement with Time Warner Telecom ("TWTC"),[4] and is even a step back from the proposed measures that BellSouth filed as recently as November 2003.[5] BellSouth's proposal is also significantly less comprehensive than the reporting it currently provides in several states pursuant to state commission orders adopting the JCIG measures, including the two largest states in the BellSouth region – Florida and Georgia.

In the discussion below, JCIG offers a general analysis of the BOCs' proposals, focusing on the overarching issues that are common to all of the proposals, followed by a metric-by-metric analysis of the various proposals. JCIG also includes a brief response to Verizon's attempts to dispute the importance of statistical tests in determining the existence of discriminatory behavior. Briefly stated, JCIG's analysis plainly shows that the BOCs' proposals would not: (1) establish an effective mechanism for the systematic measurement and reporting of their performance in ordering, provisioning, maintaining and repairing special access service; (2) improve the quality, timeliness or reliability of BOCs' special access performance; or (3) ensure nondiscriminatory performance of the basic, recurring tasks associated with providing special access. All of the proposals are so fundamentally flawed that none of them can be used even as a starting point for

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[3] The Joint Competitive Industry Group is composed of competitive local exchange carriers, long distance carriers, CMRS providers, and end user customers, all of whom support a unified set of measures, standards, and reporting requirements, as well as an enforcement plan designed to improve incumbent LECs' performance regarding interstate special access services. JCIG's membership includes: The American Petroleum Institute (API), the Association for Local Telecommunications Services (ALTS), the Competitive Telecommunications Association (CompTel), the eCommerce & Telecommunications Users Group (eTUG), AT&T, British Telecom North America, Focal Communications Corporation, Global Crossing, Ltd., MCI, NewSouth Communications, Nextel Communications, Inc., T-Mobile USA, Inc., and XO Communications, Inc.

[4] *Ex parte* presentation attached to letter from William W. Jordan, BellSouth, to Marlene H. Dortch, FCC, CC Docket Nos. 01-321 and 01-338 (August 26, 2002) ("BellSouth/ TWTC Aug. 26, 2002 Proposal").

[5] "BellSouth Service Quality Measurement Plan," attached to letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket Nos. 00-175 and 01-321 and WC Docket No. 02-112 (Nov. 14, 2003) ("BellSouth Nov. 14, 2003 Proposal").

developing a meaningful and effective measurement, reporting, and enforcement regime applicable to the BOCs' special access performance.

General Points

Performance plans generally have four components: measurements, standards, reporting and enforcement. This letter focuses on the measurements proposed by the BOCs, because measurements are the foundation of any proposal. It is impossible to build an effective performance plan on the basis of measurements that are inherently flawed (*e.g.,* fail to capture key information). Before turning to the measures themselves, however, it is worth reviewing briefly the substantial defects in the BOCs' proposals with respect to standards, reporting and enforcement.

Standards

- None of the BOC proposals establish meaningful standards.[6] Objective standards are needed to ensure that all customers, including retail end users, are provided special access services in a just and reasonable manner, as required by section 201 of the Communications Act.[7] Parity standards do not ensure adequate performance. At best, parity standards ensure only that BOC retail customers and wholesale competitors receive the same performance, even if that performance is completely unacceptable.[8]

Reporting

- None of the BOC proposals would produce reporting data that are meaningfully disaggregated.[9] Disaggregated reporting is necessary if customers and regulators are to identify unreasonably discriminatory treatment that violates the Act.[10] To

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[6] All four BOCs reject the use of objective benchmark standards and propose that the Commission adopt some form of parity standard. *See, e.g.*, BellSouth April 29, 2004 Proposal at 3-5; Qwest May 20, 2004 Presentation at 2; SBC May 27, 2004 Proposal at 7; Verizon June 16, 2004 *ex parte*, Att. C, at 1, 3, 5.

[7] *See* 47 U.S.C. § 201(b).

[8] In addition to the policy imperatives that militate against relying solely on parity standards, there also are pragmatic issues that limit the utility of parity standards, and may even make parity standards unworkable for some measures. For example, low volumes of orders may make it difficult to make meaningful "parity" comparisons for many metrics. There are also measures for which no retail analogues exist.

[9] See BellSouth April 29, 2004 Proposal at 2 and SBC May 27, 2004 Presentation at 13 (both proposing to report on an aggregated basis for three categories: Section 272 affiliates; BOC and other affiliates; and non-affiliates); Qwest May 20, 2004 Proposal at 3-9 (proposing to report on "QLDC and QCC aggregate and IXC Non-Affiliates results); Verizon May 17, 2004 Presentation at 5 (proposing to report aggregate results for affiliates and IXCs).

[10] *See* 47 U.S.C. § 202(a).

facilitate the detection of such unlawful practices, each BOC should be required to provide performance reports on a customer-specific basis to all its special access customers and to file public reports with the FCC on an aggregated basis for the following groups of customers: unaffiliated CMRS providers; affiliated CMRS providers; competitive wireline providers; affiliated wireline providers; and BOC end-user customers. The filings BellSouth has made in compliance with state orders adopting the JCIG metrics have put to rest any doubts about the BOCs' ability to collect the performance information sought by JCIG in this proceeding.[11]

- Some of the BOCs' proposals also fail to provide for timely reporting. Verizon, for example, proposes that the BOCs report their special access performance once a year, with results through December 31 of the prior year being reported on April 1st of the following year.[12] SBC proposes to provide reports on a quarterly basis.[13] To be useful, reporting must be provided on a monthly basis, and must not lag too far behind the performance being measured.[14] Special access customers need up-to-date information on the service they are being provided. Frequent, timely performance reports are essential to enable special access customers to identify and correct recurring shortcomings in the BOCs' provision of special access service. There is an inherent delay between any report of poor performance as well as the identification of any performance activities and the resolution of any enforcement action based on that performance. It is imperative that this delay not be exacerbated by untimely reporting.

Enforcement

- None of the BOC proposals provide for the correction of demonstrably unacceptable performance.[15] Effective enforcement mechanisms are needed to provide the BOCs with the proper incentives to offer their customers adequate service. Enforcement mechanisms must lead to timely and appropriate payments to carriers (service credits and/or damages) as well as forfeitures for sub-standard

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[11] *See, e.g.*, BellSouth Georgia Performance Measurement Reports for April 2004, attached to letter from Bennett L. Ross, BellSouth, to Reece McAlister, Georgia Public Service Commission, GA PSC Docket No. 7892-U (June 2, 2004).

[12] Verizon May 17, 2004 Presentation at 7; *see also* Verizon June 16, 2004 *ex parte*, Att. A at 1.

[13] *See* SBC May 27, 2004 Proposal at 2 (stating that "monthly data will be generated quarterly"). Qwest did not specify a reporting cycle in its proposal.

[14] *See* BellSouth April 29, 2004 Presentation at 4 (stating that under its plan, reporting would be available monthly).

[15] *See, e.g.,* SBC May 27, 2004 Presentation at 7-9 (arguing that the FCC cannot use a lack of parity in performance measurement results to create a presumption of discrimination, even where the BOCs' own measurements show chronic out-of-parity situations).

or unreasonably discriminatory performance. The enforcement process must be swift and reliable and the payments and forfeitures must be sufficient to deter the BOCs from engaging in conduct that is unjust, unreasonable or unreasonably discriminatory. Otherwise, the BOC will consider the risk of penalties as simply a cost of doing business.

Measurements

While all of these components are vital to ensuring that the BOCs' special access performance is just, reasonable and not unreasonably discriminatory, the foundation upon which any plan for improving BOC special access performance rests is the measurements themselves. The reporting requirements, performance standards, and even enforcement provisions, are only as good as the measurements on which they are based. The measurements proposed by BellSouth and the other BOCs clearly fail to capture the data needed for an effective performance assurance plan.[16] Among their more obvious shortcomings, the BOCs' proposals fail to capture performance failures and other important data and fail to establish clear and meaningful business rules.

Exclusion of performance failures and other important measures. The measurements proposed by the BOCs focus only on the "good news," *i.e.,* those instances in which a BOC's performance meets expectations. The BOCs do not propose to track what happens after a measurement is missed, however. For example, the BOCs' proposals provide no information regarding Access Service Requests ("ASRs")[17] for which no Firm Order Confirmation ("FOC")[18] is returned, and no information regarding installation appointments that are missed. In addition, the measurements proposed by the BOCs provide no incentive for the incumbent LECs to return a FOC once a FOC due date has been missed, or to provision an order quickly once an installation appointment has been missed.

The BOC proposals do not capture certain critical information, failing to measure information such as: what happens to FOCs that are not returned on time (captured in JCIG's JIP-SA-2, FOC Receipt Past Due); the quality of the response to a FOC request

[16] For ease of discussion, this analysis is organized around the BellSouth proposal filed April 29, 2004. JCIG also provides comments on the Qwest, SBC and Verizon proposals to the extent that they differ materially from BellSouth's proposal.

[17] Carriers and some large end users place an order for special access service with an incumbent LEC by submitting an ASR. The ASR is an industry form used to transmit detailed ordering information including: end-user customer premises address; billing name and billing address; technical specifications for the service requested; the requested due date; and the names and telephone numbers of relevant contacts.

[18] The FOC is an electronic transmission sent by the incumbent LEC in response to an ASR. Among other things, the FOC contains the due date specified by the BOC for the installation of requested facilities (the FOC Due Date). Competitive carriers rely on the FOC Due Date to notify their own end-user customers of the date on which the facilities will be installed and services will be turned up.

(captured in JCIG's JIP-SA-3, Offered vs. Requested Due Date); the length of time it takes to install service after a due date is missed (captured in JCIG's JIP-SA-5, Days Late); the number of circuits for which the due date has passed, but which still have not been installed (captured in JCIG's JIP-SA-7, Past Due Circuits); and the magnitude of chronic failures (captured in JCIG's JIP-SA-11, Repeat Trouble Report Rate). Without these measurements, it will be nearly impossible to gauge the BOCs' performance accurately.[19]

Lack of clear and meaningful business rules. The BOCs' proposals lack clear and meaningful business rules. For example, BellSouth's proposal excludes items such "carrier caused or end user misses" (*i.e.*, "CNRs") from certain calculations, but offers an open-ended definition that is subject to interpretation,[20] and provides no means of tracking CNRs. BellSouth claims that there is no need to track CNRs because "customer/end-user behavior provides no basis for assessing BellSouth's performance."[21] As the ARMIS reports filed by BellSouth and the other BOCs demonstrate, however, there is a need to ensure that all the BOCs are subject to uniform measurements and to business rules designed to capture the data that is most important to customers and regulators. Otherwise, the resulting reports will be meaningless or even misleading.

BellSouth's 2003 ARMIS results show 100% installation commitments met for switched access and 99.8% installation commitments met for special access.[22] BellSouth also reports that nearly 12% of all switched access commitments and more than 10% of all special access installation commitments were "missed for customer reasons." BellSouth thus claims that it was not responsible for any missed switched access appointments and was responsible for missing only 232 special access installations. On the other hand, according to BellSouth, customers were responsible for over 56,000

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[19] Verizon originally proposed that the BOCs report on only three measures, none of which it defined in any detail. Verizon May 17, 2004 Presentation at 7. Clearly, such limited reporting would provide no material benefit to BOC customers or to regulators. Verizon seems to have reconsidered its position slightly, filing a draft proposal that includes five special access measures. *See* Verizon June 16, 2004 *ex parte*.

[20] Although BellSouth's definition appears to resemble JCIG's definition of customer not ready ("CNR") situations, the critical difference is that under JCIG's definition a missed appointment can be counted as a CNR only if the incumbent LEC has notified the ordering carrier of a CNR situation and allowed the carrier a reasonable period of time to correct the situation. *See* JCIG Proposal at 7, JIP-SA-4. This requirement constrains the BOC's ability to evade culpability for a missed installation appointment by improperly blaming the end user or requesting carrier for the BOC's failure to fulfill its obligations.

[21] *Ex parte* presentation attached to letter from Kathleen B. Levitz, BellSouth, to Marlene Dortch, FCC, CC Docket No. 01-321, at 13 (June 9, 2004) ("BellSouth June 9, 2004 Presentation").

[22] *See* BellSouth's ARMIS Paper Report 43-05, Service Quality Report (2003), *available at*: <http://svartifoss2.fcc.gov/eafs/paper/43-05/PaperReport05.cfm> ("BellSouth's ARMIS Report").

missed appointments for switched access installation and over 12,000 missed appointments for special access installations.[23]

Verizon similarly reported that 60% (2,799 out of 4,694) of all switched access installation intervals were missed for customer reasons, compared to only 1.2% that were missed due to Verizon.[24] Verizon further admits that it was responsible for missing roughly 13,800[25] special access installation intervals, but claims that customers were at fault for an additional 22,300 missed installation intervals.[26] This type of reporting demonstrates the importance of having meaningful definitions of key terms and for tracking both the BOCs' performance and their claims regarding the impact of customer or end user behavior on performance.

Equally problematic are the BOCs' assertions that each reporting carrier should be permitted to devise its own company-specific business rules.[27] Verizon even goes so far as to claim that company-specific business rules will lead to "more comparable and meaningful data."[28] Nothing could be further from the truth. Without uniform business rules, it will be impossible to compare performance by individual BOCs and identify best practices that the FCC can use to determine whether BOCs' special access performance is satisfactory. The ARMIS reports noted above provide an instructive example of the type of meaningless reporting that would result if the BOCs are allowed to define their own business rules. As AT&T noted in a recent filing, the BOCs' past actions demonstrate the risks inherent in allowing the BOCs to define their own metrics and adopt their own business rules.[29] In addition, many customers order service from multiple BOCs, and need to have the ability to measure BOC performance consistently across multiple territories.

Finally, although BellSouth has now committed to a data retention policy,[30] the other BOCs do not propose to provide special access customers with any of the data

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[23] *See* BellSouth's ARMIS Report, Rows 110-112, columns aa-ac.

[24] *See* Verizon's ARMIS Paper Report 43-05, Service Quality Report (2003), rows 110-114, columns aa-ac ("Verizon's 2003 ARMIS Report").

[25] 155,775 total orders minus 141,973 (155,775 x 91.14% commitments met).

[26] *See* Verizon's 2003 ARMIS Report.

[27] *See* Verizon May 17, 2004 Presentation at 2, 6; Qwest May 20, 2004 Presentation at 2 (proposing "individual RBOC standards"); SBC May 27, 2004 Presentation at 2, 5 (arguing that BOCs should be allowed to establish "company-specific business rules").

[28] Verizon May 17, 2004 Presentation at 6.

[29] *See* letter from Aryeh Friedman, AT&T, to Marlene Dortch, FCC, WC Docket Nos. 02-112, *et al.*, at 4 (June 7, 2004) ("Friedman Letter") (describing Verizon's abuses of the of the section 272 biennial audit process).

[30] BellSouth June 9, 2004 Presentation at 13.

underlying their reports. For the measurements to have any credibility, it is essential that the underlying data be subject to collection and auditing.[31]

Metric-by-Metric Analysis

Ordering

Unanswered ASRs. BellSouth proposes a single measure to capture ordering performance – FOCT2, Firm Order Confirmation Timeliness.[32] As JCIG has explained in previous filings, however, a single measure cannot provide a complete assessment of the BOCs' performance regarding the ordering process.[33] Among other problems, the FOCT2 measure calculates performance only for those ASRs for which a FOC is provided, and does not track ASRs to which the BOC does not respond in the month covered by the BOC's report. Although the FOCT2 measure includes a diagnostic showing the percentage of requests received and due during the reporting that were responded to, it provides no information regarding those ASRs for which no response was provided. Thus, it is possible that open ASRs to which the BOC has not responded will accumulate from month to month and that there will be no means of measuring or tracking the backlog. Tracking ASRs for which no FOC has been provided would also increase the BOCs' incentive to return FOCs even after they are past due. These are precisely the concerns that JCIG's proposed measure JIP-SA-2 (FOC Receipt Past Due) was designed to address.[34]

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[31] *See* Friedman Letter at 4-5 (explaining that without access to the underlying data there was no way to evaluate whether Verizon had reported its section 272 performance results accurately or whether the data was indicative of Verizon's overall performance).

[32] Although BellSouth proposes to measure performance related to both switched and special access, JCIG's comments are limited solely to the special access measurements. *See* BellSouth April 29, 2004 Proposal at 3. *See also,* Qwest May 20, 2004 Proposal at 4 (PO-5-272 – Firm Order Confirmations On Time) (proposing to report on performance for Feature Group D orders).

[33] *See, e.g.*, "Joint Competitive Industry Group; Origin of Metrics," Attachment A to letter from JCIG to Dorothy Attwood, attached to letter from Ruth Milkman to Marlene H. Dortch, FCC, CC Docket No. 01-321, at 1-4 (June 18, 2002) ("Origin of Metrics"); *ex parte* presentation attached to letter from Gil M. Strobel to Marlene H. Dortch, FCC, CC Docket No. 01-321, at 6-8 (June 23, 2003).

[34] BellSouth has expressed concern that it would be duplicative to measure both the number of FOCs that were returned on time and the number that are past due. However, it is important both to capture those cases where FOCs are returned and determine whether they were returned in a timely manner, and to track instances in which a FOC has not been returned, and provide an incentive for the BOC to ensure that unanswered ASRs do not accumulate. JIP-SA-2 is designed to show the magnitude of late FOCs by comparing the cumulative number of open ASRs, from current and past months that are not in a rejected or queried status, to the volume of ASRs sent during the reporting

Quality of the ordering process. BellSouth's proposed FOCT2 also fails to provide any information regarding the quality of the ordering process or the due date offered by the BOC. Specifically, BellSouth's proposal does not provide information on how the installation date offered by the BOC compares to the date requested by the special access customer. Consequently, a BOC could respond to an ASR with a FOC that includes any installation date the BOC chooses, and ignore the date requested on the ASR. The differences between offered and requested installation dates are important to customers and to assessing whether special access services are being provisioned in a commercially reasonable manner. This issue could be addressed if the BOCs measured offered versus commercially-requested due dates as JCIG proposed in its JIP-SA-3 measurement.

Projects. BellSouth's FOCT2 measure also excludes "projects," which are not well defined. This is problematic because there is no uniform definition of a project. Each BOC has formulated its own definition, and if the term is not clearly defined at the outset, it will be subject to manipulation by the BOCs. For example, a BOC could avoid reporting on poor performance regarding a particular order by re-defining the order as a "project." Therefore, it is important that any rules adopted by the FCC either include projects in the measurements,[35] or define projects in a manner that allows the measurements to be meaningful.

Facilities checks. Although BellSouth's November 2003 proposal included a commitment to conduct a facilities check before issuing a FOC,[36] its latest proposal includes no such commitment. Without a facilities check the BOC is more likely to issue a FOC due date that it cannot meet. For a FOC due date to have any meaning, it must be a "firm" date upon which the customer can rely.

Disconnect orders. BellSouth also includes "disconnect ASRs" (*i.e.*, ASRs requesting disconnection of an existing circuit) in its measurement under FOCT2. This inclusion is likely to boost the BOCs' performance as disconnect ASRs are very simple to fulfill and lack the complexity that sometimes causes delays in fulfilling installation requests. Because disconnections are much easier to perform than installations, inclusion of disconnect ASRs would produce a distorted picture of the BOCs' performance with

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period. If the BOC does not provide any information on unanswered ASRs it would be possible for backlogs to build up undetected, as the problem would never be identified in the FOCT2 measure. In addition, JIP-SA-2 specifically makes allowances for cases where the expected interval has not been exceeded at month end. For example, orders for a DS0 or DS1 are excluded from the FOC Receipt Past Due measurement if they were sent in the last 2 business days of the month. Similarly, an order for a DS3 is excluded from JIP-SA-2 if it was sent within the last 5 business days of the month.

[35] *See, e.g.,* JCIG Proposal at 4, JIP-SA-1.

[36] *See* BellSouth Nov. 14, 2003 Proposal at 2 (definition of SA-1: Firm Order Confirmation Timeliness).

respect to the aspect of the ordering process that is of interest to customers –installation orders. The measurements should therefore exclude disconnect ASRs.[37]

Qwest

Qwest also proposes to capture ordering performance through a single measure, PO-5-272, Firm Order Confirmations On Time. This measurement is similar to BellSouth's FOCT2 and suffers from many of the same flaws. In addition, Qwest excludes ASRs involving individual case basis handling from its measures, though, as Qwest notes, these same orders may be excluded as "projects" under the BellSouth proposal[38] and proposes a longer standard interval for DS0 and DS1 special access orders than either BellSouth or JCIG.[39]

SBC

SBC's proposed measurement, Service Category 3, Time to Firm Order Confirmation, suffers from all of the defects associated with the BellSouth and Qwest proposals. In addition, SBC fails to distinguish between special and switched access orders and offers no standard interval. Instead, SBC proposes to provide a single measurement, reporting the interval within which 95% of its FOCs have been returned.

Verizon

Verizon's proposed measurement Firm Order Confirmation Timeliness, is very similar to BellSouth's, but provides for longer intervals than BellSouth's proposal.[40]

<u>Provisioning</u>

Business rules. BellSouth proposes two measures related to provisioning: PIAM2, Percent Installation Appointments Met; and NITR2, New Installation Trouble Report Rate.[41] PIAM2 is intended to measure the BOC's timeliness in meeting its own confirmed installation due dates, *i.e.*, whether the service is installed on the date to which the BOC committed in its FOC. However, the measurement as proposed by BellSouth is susceptible to manipulation due to its exclusion of "carrier caused or end user misses,"

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[37] BellSouth seems to recognize the problems associated with counting disconnect orders, as its provisioning measure, PIAM2, excludes such orders. BellSouth April 29, 2004 Presentation at 4.

[38] *See* Qwest May 20, 2004 Presentation at 5.

[39] *Compare* Qwest May 20, 2004 Proposal at 4 (FOC interval of 3 business days for DS0, DS1, DS3 and higher) with BellSouth April 29, 2004 Proposal at 3 (standard interval of 2 business days for DS0 and DS1; but 5 business days for DS3).

[40] Verizon proposes interval categories of 5 and 7 business days, which are unreasonably long, versus the 2 or 5 business days proposed by BellSouth. *See* Verizon June 16, 2004 *ex parte*, Att. C at 1.

[41] BellSouth also proposes to measure Average PIC Change Interval (PIC2), but JCIG offers no view on this measure as it relates only to switched access.

particularly given BellSouth's open-ended definition of these misses[42] and its unwillingness to report on the number of installations affected by such misses. As explained above, the BOCs have used similarly ill-defined exclusions to ensure that virtually all missed installation appointments are categorized as carrier-caused or end user misses. The results of such tactics are clear from ARMIS data purporting to show that the BOCs have nearly 100% on-time performance, while thousands of installation dates are missed for reasons that are ostensibly unrelated to the BOC's performance.[43]

Missing measurements. In addition, the BellSouth proposal does not provide any information regarding other important installation-related measurements, such as: (1) the time required for the BOC to complete the installation after the due date has been missed (*i.e.,* how many days late, or whether installation was ever completed for circuits not provisioned by the committed due date);[44] (2) the time required for the BOC to install service compared to the interval requested by the customer or offered by the BOC;[45] or (3) the number of circuits for which the installation date has passed and the work has not been completed.[46] All three of these measures provide data that are essential to assessing the BOCs' provisioning performance. The absence of any one of these measurements severely limits the value of BellSouth's proposal. Without any means of tracking what happens to orders once the initial installation date has been missed, the data will provide at best an inaccurate, and at worst a completely misleading, picture of BOC performance.[47]

Capturing all relevant troubles. BellSouth inexplicably limits its New Installation Trouble Report Rate measure (NITR2) to the first report of customer trouble that occurs within 5 days of installation of a new circuit. As explained below, BellSouth's proposed measure would exclude precisely the information needed to assess its provisioning performance. Among other problems, BellSouth's proposal would: (a) limit the reporting period to 5 days, as opposed to the typical 30-day period;

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[42] *See* note 20, *supra*.

[43] *See* discussion at 6-7, *supra*.

[44] *See* JCIG JIP-SA-5, Days Late.

[45] *See* JCIG JIP-SA-6, Average Intervals – Requested/Offered/Installation.

[46] *See* JCIG JIP-SA-7, Past Due Circuits.

[47] Both BellSouth and Qwest previously filed letters supporting three separate measures for On Time Performance to FOC Due Date, Days Late; and Past Due Circuits similar to JCIG's proposed JIP-SA-4, JIP-SA-5 and JIP-SA-7 measures. *See* Bell South/TWTC Aug. 26, 2002 Proposal and "Qwest *Ex Parte*, Special Access Performance Measurements," attached to letter from John W. Kure, Qwest, to Marlene H. Dortch, CC Docket No. 01-321 (Aug. 8, 2002) ("Qwest Aug. 8, 2002 *ex parte*") (both providing for three separate measures and supporting the calculation of on time performance and days late based on circuits completed during the reporting period, with the Past Due Circuits captured in a month end snapshot). It is unclear why either carrier has retreated from these prior positions.

(b) exclude second and subsequent trouble reports, masking the severity of the BOC's problems; and (c) exclude troubles "outside of BellSouth's control," which would lead to same distorted view of BOC performance that ARMIS data present.

The accepted norm is to report on all troubles that occur within 30 days of installation.[48] The arbitrarily short period covered by this measure, along with the weak business rules proposed by BellSouth, makes the measure meaningless.[49] The point of measuring new installation troubles is to provide a basis for assessing the quality of the BOC's installation performance. Counting only a single occurrence of a problem, even if it persists and results in multiple trouble reports, and limiting coverage to the first five days after installation deprives customers and regulators of the ability to make a realistic assessment of the BOC's performance.[50] An end-user customer expects service to function properly for more than the first five days after installation and the true level of customer irritation can be determined only by counting all troubles that occur within the first month of service.[51]

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[48] For example, the 30-day period proposed by JCIG is used by the New York Public Service Commission and was also included in a proposal that SBC filed with the California Public Utilities Commission. *See Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.*, NY PSC Case Nos. 00-C-2051 & 92-C-0665, Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines at Appendix 3 (Dec. 20, 2001) ("NY PSC Guidelines"); "Special Access, Intrastate Business Rules, California," Attachment 1 to SBC California's (U 1001 C) Opening Comments on Intrastate Special Access Performance Measures, Cal. PUC Docket Nos. R. 97-10-016 & I. 97-10-017 (Aug. 29, 2003), both attached in pertinent part to Letter from Gil Strobel to Marlene Dortch, FCC, CC Docket No. 01-321 (Oct. 15, 2003). BellSouth's proposed five-day period is unsupported by any evidence in the record and would exclude many troubles that should be captured in any meaningful measurement of new installation trouble reports.

[49] For example, BellSouth states that it will count only "the first customer direct trouble report received within 5 days of a completed service order." BellSouth April 29, 2004 Proposal at 5. In addition, BellSouth proposes to exclude troubles "outside of BellSouth's control" from its measurements. *Id.* As noted above, such vague exclusions are open to interpretation and can lead to extremely skewed results depending on what the BOC determines to be "outside of its control."

[50] *See* letter from JCIG to Michelle Carey, FCC, attached to letter from Gil M. Strobel to Marlene H. Dortch, FCC, CC Docket No. 01-321, at 2-3 (Oct. 27, 2003) ("JCIG Oct. 27, 2003 *ex parte*").

[51] Because customers receive such uncertain due dates on the delivery of circuits, they frequently will not schedule equipment installation until after the circuit is in place. Therefore, they may not even have the ability to know that the circuit is not working until after the 5 day period proposed by BellSouth has ended.

By omitting repeat troubles from its measure, BellSouth is removing a significant set of data that is essential to measuring installation quality and new circuit quality. For example, if repeat troubles were excluded, a BOC that installed 1,000 new circuits, 10 of which generated 3 troubles each, would appear to be performing just as well as a BOC that installed 1,000 new circuits, 10 of which generated a single trouble. However, the actual customer impact would be very different under the two scenarios, as the harm to the end-user customer, and hence to the ordering carrier's reputation, would be much greater in the first instance, in which each circuit experienced multiple troubles, than in the second instance, in which each circuit generated only a single trouble.

Whether repeat troubles are caused by the recurrence of a single problem or are completely unrelated to each other, the total number of troubles is an important indicator of the quality of the new circuit. In fact, a large number of troubles on newly-installed circuits may indicate problems with the quality of the BOC's installation work or defects in the circuit itself. It also may signal that the BOC is sacrificing work quality in an attempt to satisfy other standards, such as on-time performance. Because of the limitations BellSouth has imposed on NITR2, its proposed measure fails to track the end-user's experience, which is the only meaningful gauge of a carrier's performance. Any measure that does not capture the total number of trouble reports created within the first 30 days of service would produce incomplete and potentially misleading results.

Qwest

Qwest proposes two provisioning measures: OP-3-272, Installation Commitments Met and OP-4-272, Installation Interval. OP-3-272 is comparable to BellSouth's proposed PIAM-2, with one slight difference: Qwest excludes installation appointments that were missed due to "non-Qwest reasons" from its measurement, rather than counting them as met appointments.[52] Qwest also proposes to measure the average installation interval, which could provide useful data similar to that captured by JCIG's proposed diagnostic measure JIP-SA-6, Average Intervals – Requested/Offered/ Installation. However, Qwest's proposal does not include any distinct measurement of new installation troubles, comparable to BellSouth's NITR2 or JCIG's JIP-SA-8.[53] As explained above, it is critical that the BOCs measure and report on new installation troubles separately from other troubles.[54]

SBC

SBC proposes to measure the percentage of orders completed on or before the due date desired by the customer (Service Category 1) as well as the number of days from the FOC due date in which 95% of orders are in service (Service Category 2). Unlike Qwest,

[52] *See* Qwest May 20, 2004 Proposal at 5 (OP-3-272).

[53] In its presentation, Qwest states that it currently measures new installation troubles within thirty days of installation, Qwest May 20, 2004 Presentation at 6, but its proposal does not appear to include a measurement for new installation trouble report rate.

[54] *See* JCIG Oct. 27, 2003 *ex parte* at 1-4 (explaining the importance of measuring new installation troubles).

SBC proposes to identify installation appointments that are missed due to "customer reasons" as met appointments.[55] SBC's proposal has the advantage of capturing some data regarding the BOC's performance relative to the customer's desired due date as well as performance relative to the FOC due date. However, SBC's measurements would not provide sufficient insight into whether poor performance under Service Category 1 was due to the BOC's failure to match the offered due date with the customer's requested due date or whether the problem was the BOC's inability to meet the FOC due date. From the perspective of a competitive carrier, this distinction is important because a BOC's failure to meet the FOC due date to which it committed is likely to be much more problematic for the carrier's relationship with its end-user customers than is a BOC's failure to match the FOC due date with the requested due date.[56] SBC also fails to provide a distinct measure addressing new installation troubles comparable to either BellSouth's proposed NITR2 or JCIG's JIP-SA-8.

Verizon

Verizon's proposed measurement, Installation On Time Performance, is comparable to BellSouth's proposed PIAM2,[57] but its New Circuit Failure Rate measure is superior to BellSouth's proposed NITR2 in at least two ways. First, Verizon's New Circuit Failure Rate measure comports with accepted norms by measuring troubles that occur within 30 days of order completion (compared to only 5 days for BellSouth's proposed NITR2).[58] Second, Verizon appears willing to report each repeat trouble as a separate event, since it proposes to measure "[a]ll customer reported troubles where the trouble was found in the Verizon network."[59] However, Verizon excludes No Trouble Found ("NTF") and Test OK ("TOK") from its proposed measure, thereby reducing the number of troubles likely to be included in its report. Both NTF and TOK situations should be included in failure rate reports.[60]

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[55] *See* SBC May 27, 2004 Proposal at 1, 3, 4.

[56] *See* Origin of Metrics at 3-6.

[57] Verizon June 16, 2004 *ex parte*, Att. C at 2. Although Verizon does not list "carrier caused or end-user misses" as an exclusion to its proposed measure, the Verizon proposal would still suffer from the fact that it proposes to count only BOC missed appointment codes in the numerator, essentially counting "customer caused" misses as met appointments. These misses should be counted in both the numerator and denominator. *See* JIP-SA-7. However, Verizon's proposed measure at least has the advantage of capturing information regarding "customer caused" misses. By excluding customer caused misses from its measure entirely, BellSouth deprives customers and regulators of access to any data related to such situations.

[58] Verizon June 16, 2004 *ex parte*, Att. C at 3.

[59] *Id.*

[60] *See* JCIG's proposed measurement JIP-SA-8, New Installation Trouble Report Rate (providing no exclusions for either NTF or TOK).

Maintenance and Repair

Troubles "outside BellSouth's control." BellSouth proposes two measures directed at maintenance and repair issues: CTRR2, Failure Rate/Trouble Report Rate and MAD2, Average Repair Interval. These are comparable to JCIG's proposed metrics JIP-SA-9, Failure Rate and JIP-SA-10, Mean Time To Restore. However, both CTRR2 and MAD2 suffer from vaguely worded exclusions. Specifically, both measurements exclude "troubles outside BellSouth's control." This exclusion is not defined, but presumably covers situations other than "customer caused troubles," which are the subject of a separate exclusion. The vagueness of the wording makes it difficult to predict all of the situations that might fall under the category of "troubles outside BellSouth's control." One possibility is that BellSouth might apply this exclusion to NTF and TOK situations, both of which should be included in calculations of trouble report rates and average repair intervals. What is clear is that the terms used in any exclusion must be better defined.

Repeat troubles. BellSouth fails to offer any measurement designed to assess repeat troubles.[61] BellSouth suggests that repeat troubles are covered by its proposed CTRR2 measure. That measure, however, fails to capture and isolate the magnitude of chronic problems. Measuring occurrences of repeat troubles provides a basis for assessing the overall repair quality provided by the BOC. Specifically, measuring the repeat trouble rate enables customers to identify problems with the BOC's repair processes that cause troubles to recur on circuits that supposedly have been repaired and restored by the BOC. Indeed, it is common industry practice to isolate and evaluate repair quality through the separate measurement of repeat trouble reports occurring within 30 days of the first reported trouble.[62]

Qwest

Qwest's MR-6-272, Mean Time to Restore and MR-8-272, Trouble Rate are comparable to BellSouth's MAD2 and CTTR2, respectively. Qwest's measures are better than BellSouth's maintenance repair measures in two ways, however. First, Qwest includes both Test OK and No Trouble Found (the equivalent of JCIG's Found OK) in its maintenance and repair metrics.[63] Second, Qwest also includes a separate measure

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[61] JCIG has defined "Repeat Trouble" as "[t]rouble that reoccurs on the same telephone number/circuit ID within 30 calendar days." JCIG Proposal at 15.

[62] *See* JCIG JIP-SA-11; *See also Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies,* Order Implementing Proposed Revisions to the Performance Assessment Plan, Fla. PSC Docket No. 000121A-TP, at 41 (Apr. 22, 2003), attached to Letter from Gil Strobel to Marlene Dortch, FCC, CC Docket No. 01-321 (May 13, 2003); *Performance Measures for Telecommunications Interconnection, Unbundling and Resale,* Order Adopting Changes to Performance Measures, Ga. PSC Docket No. 7892-U, at 5 (Nov. 14, 2002), attached to Letter from Gil Strobel to Marlene Dortch, FCC, CC Docket No. 01-321 (Dec. 18, 2002).

[63] *See* Qwest May 20, 2004 Presentation at 6. BellSouth excludes "troubles outside of BellSouth's control" from its measurements – a term which is not defined, but apparently

capturing the percentage of troubles cleared within four hours (MR-5-272) which may provide useful data, particularly if the timeframe is reduced to one or two hours as proposed by JCIG.[64] Like BellSouth, however, Qwest fails to propose a measurement aimed at identifying repeat troubles. This represents a retreat from an earlier Qwest proposal which included a measurement of repeat trouble reports.[65]

SBC

SBC's proposed Service Category 7 is comparable to BellSouth's MAD2. However, SBC excludes trouble reports coded TOK (Test OK) and FOK (Found OK) and excludes troubles on channelized circuits. SBC's Service Category 5 also excludes channelized circuits and reports coded as TOK or NTF (No Trouble Found). SBC's proposed measure does provide insight into the amount of time it takes SBC to clear most (95%) of its troubles. While this measurement may have some utility, it does not provide any information regarding the most serious outages, *i.e.*, the 5% not reflected in SBC's proposed measure. Like BellSouth and Qwest, SBC also fails to measure repeat troubles.

Verizon

Verizon's proposed Failure Frequency Rate and Mean Time to restore measurements are very similar to BellSouth's proposed CTRR2 and MAD2 measures.

Importance of Statistical Analysis

Verizon argues that statistical tests alone do not provide evidence of competitively significant discrimination.[66] In fact, statistical comparisons can provide very strong, if not conclusive, evidence of discrimination.[67] This is evident from the Declarations of Dr. Robert M. Bell, who submitted statistical analyses of all the section 272 audits.

Verizon argues that: (i) t-tests and modified Z tests depend on distributional assumptions that generally do not hold when there are small sample sizes, and (ii) the probability of one or more Type I errors (false positives) grows very large when there are tests for multiple measures or multiple months.[68] However, data aggregated over

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encompasses issues other than troubles caused by customer-provided equipment or other customer-caused troubles, both of which are covered by a separate exclusion.

[64] *See* JIP-SA-10, Mean Time To Restore (proposing that ILECs' restore lower-capacity circuits within two hours, and DS3 and higher capacity circuits within one hour).

[65] *See* Qwest Aug. 8, 2002 *ex parte* at 6 (Qwest SA-11, Repair Repeat Report Rate).

[66] Verizon June 16, 2004 *ex parte* at 2.

[67] *See, e.g., Castaneda v. Partida,* 430 U.S. 482 (1977) (using statistical data to prove discrimination in jury selection); *City of Tuscaloosa v. Harcros Chemicals, Inc.*, 158 F.3d 548 (11th Cir. 1998) (statistical data and expert testimony raised genuine issue of material fact as to whether chemical distributors engaged in price fixing conspiracy).

[68] Verizon June 16, 2004 *ex parte* at 3-4.

several months can provide much more conclusive evidence. For example, in analyzing the section 272 audits, Dr. Bell did not use a single month's data but rather combined data over longer periods and performed statistical inferences for the aggregate period. That procedure eliminated or greatly reduced both of the concerns raised by Verizon. So analyzed, the data in Verizon's and the other BOCs audits demonstrated statistically significant enduring and consistent patterns of poorer performance for non-affiliated carriers.[69]

Finally, Verizon argues that statistical tests are flawed if the populations of customers are non-comparable ("apples to oranges").[70] The short answer to this argument is that when, as in the case of the Verizon and other BOC section 272 audits, the statistical analyses produce strong evidence of poorer performance for non-affiliates, the burden should shift to the BOC to present evidence that provides legitimate and credible explanations for the poorer performance. Indeed, in the most recent audit, Verizon attempted to provide an explanation, although, as shown by Dr. Bell in his Declaration, "Verizon analyses [were] generally superficial and incomplete."[71]

Conclusion

Although JCIG has not endeavored to provide an exhaustive list of every flaw in the BOCs' proposals, the number and nature of the concerns discussed above are sufficient to demonstrate that none of these proposals would provide customers or

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[69] For example, the average Firm Order Confirmation Response Time ("FOC") intervals for non-affiliated carriers were consistently and materially longer than those for the 272 affiliate (in New York, for 21 of the 23 months where there were any affiliate orders, usually by a factor of three or greater; in Massachusetts, in each of the 12 months where there were affiliate orders). Declaration of Dr. Bell in the Second Verizon Audit, EB Docket No. 03-200, ¶¶ 6-7 (Feb. 10, 2004). The same was true for average installation intervals (in New York, non-affiliates received poorer service in 22 of 23 comparisons; in Massachusetts, the non-affiliate averages were longer in 7 of the 8 months where there were any affiliate orders), and average repair times (in New York, non-affiliates had longer repair times for DS1 service in 21 of 23 comparisons; in Massachusetts, non-affiliates had longer repair times for FG-D for 11 of 12 months in 2002 and the non-affiliates' average was more than twice that for section 272 affiliates). *Id.*, ¶¶ 8-9. As noted by Dr. Bell, had the raw data been provided, he could have performed permutation testing: "Nonetheless, comparisons of the non-affiliate/affiliate differences with the estimated standard errors for the individual averages makes it clear that none of the differences . . . were likely to have occurred by chance if installation/repair times for the two sets of customers were drawn from the same distribution." *Id.* ¶ 11. *See also*, Dr. Bell's Declaration in the second SBC audit, EB Docket No. 03-199, ¶¶ 13-26 (March 26, 2004); Dr. Bell's Declaration in the BellSouth audit, EB Docket No. 03-197, ¶¶ 5-13 (March 9, 2004).

[70] Verizon June 16, 2004 *ex parte* at 3.

[71] Declaration of Dr. Bell, EB Docket No. 03-200, ¶ 13; *see also id.* ¶¶ 12-17.

regulators the information they need to assess the BOCs' special access performance accurately. Accordingly, none of these proposals should be adopted for use by the FCC. Instead, BOC special access performance should be measured in accordance with the metrics JCIG proposed over two years ago. Unlike the unilateral proposals offered by the BOCs, the JCIG metrics were the product of a collaborative effort by multiple organizations and carry the support of a broad range of special access customers, including wireless carriers, interexchange carriers, local exchange carriers and end users. The FCC should therefore act on the commitment it made in its OI&M order[72] by adopting the JCIG metrics as expeditiously as possible.

Respectfully submitted,

The Joint Competitive Industry Group

[72] *Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, 19 FCC Rcd 5102, ¶ 24 (2004).